

E-Filed on October 23, 2006

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7 **UNITED STATES BANKRUPTCY COURT**
 8 **DISTRICT OF NEVADA**

9 In re:
 10 USA COMMERCIAL MORTGAGE COMPANY,
 11 Debtor.

Case Nos.: BK-S-06-10725-LBR
 BK-S-06-10726-LBR
 BK-S-06-10727-LBR
 BK-S-06-10728-LBR
 BK-S-06-10729-LBR

12 In re:
 13 USA CAPITAL REALTY ADVISORS, LLC,
 14 Debtor.

JOINTLY ADMINISTERED UNDER
 BK-S-06-10725 LBR

15 In re:
 16 USA CAPITAL DIVERSIFIED TRUST DEED
 17 FUND, LLC,
 18 Debtor.

Chapter 11 Cases

19 In re:
 20 USA CAPITAL FIRST TRUST DEED FUND,
 21 LLC,
 22 Debtor.

**REPLY MEMORANDUM IN SUPPORT
 OF MOTION FOR ORDER
 APPROVING RETENTION PLAN OF
 DEBTOR'S REMAINING
 EMPLOYEES**

23 In re:
 24 USA SECURITIES, LLC,
 25 Debtor.

Date: October 25, 2006
 Time: 9:30 a.m.

26 Affects:
 All Debtors
 USA Commercial Mortgage Company
 USA Capital Realty Advisors, LLC
 USA Capital Diversified Trust Deed Fund, LLC
 USA Capital First Trust Deed Fund, LLC
 USA Securities, LLC

27 The Official Committee of Unsecured Creditors of USA Commercial Mortgage
 28 Company (the "Committee"), submits this Reply Memorandum and the attached
 29 Declaration in support of the Debtors' Motion for Order Approving Retention Plan of

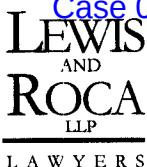


1 Debtor's Remaining Employees (the "Motion") (DE 1429). In particular, the Committee
2 addresses the assertion of the Office of the United States Trustee that the proposed bonus
3 and incentive payments are not justified by the facts and circumstances of this case.

4 As Mr. Burr's Declaration as well as the Debtors' declarations demonstrate, USA
5 Commercial Mortgage Company ("USACM") provides loan servicing for the Lenders,
6 including Direct Lenders, as well as USA Capital Diversified Trust Deed Fund, LLC
7 ("Diversified") and USA Capital First Trust Deed Fund, LLC ("First Trust"). Its loan
8 servicing functions require employees to monitor and collect loans, administer requests for
9 pay-offs, and otherwise deal with borrowers. In addition, the loan servicing function
10 requires providing information to Lenders about their loans, accounting for payments
11 received and sums due to Lenders, all of which has become substantially more complex in
12 light of the hold-backs authorized by this Court's prior orders. Separately, USACM
13 provides accounting for Diversified and First Trust.

14 In addition, USACM is a debtor in a complex Chapter 11 bankruptcy case,
15 responding to requests for information from a myriad of constituencies, including the
16 official Committees, the United States Trustee, the Court, regulators, creditors, investors in
17 the Funds, and interested parties. It needs employees to identify where information can be
18 located and then to provide that information as requested.

19 Debtors' motion, and the Committee's independent investigation, suggests that the
20 ongoing loss of employees is approaching a critical stage. At some point, the lack of
21 employees means that there is no one left with institutional knowledge, and no one
22 available to service loans or provide requested information. Failure to collect loans hurts
23 Lenders, hurts the Funds to the extent of their interests in the loans, and hurts USACM by
24 its inability to collect loan servicing and other fees. An inability to collect loans would be
25 a breach of applicable loan service agreements and could give rise to Lender damage
26 claims.



1 The alternative to retaining employees is either to hire new employees who lack
2 knowledge of the business, experience and training, or to hire subcontractors or employees
3 of Mesirow Interim Financial Management on an interim basis. Employees hired on an
4 interim basis, or independent contractors, will be hired at a substantially higher rate of
5 compensation than retaining existing employees. New employees obviously lack any
6 institutional knowledge, and consequently their job performance will be materially less
7 efficient, and they will have less ability to provide loan servicing and information
8 response, than would continuing employees of the companies.

9 The Committee evaluated Debtors' request for approval of the employee retention
10 program. The program offered to this Court was provided only after negotiations with the
11 Committee, as well as representatives of the other official Committees. While not a
12 perfect plan from the Committee's perspective, the compensation package is not overly
13 generous and is tied to the employees' continued retention at the company. For example,
14 the accruing severance obligation is payable to the employee only if and when the
15 employee is terminated by USACM. An employee who voluntarily leaves USACM for
16 another job forfeits the severance, thus giving the employee an economic incentive to stay
17 at work in a job that will not be long term in nature.

18 For these reasons, the Committee respectfully suggests that there is in fact
19 substantial justification for the proposed program under the facts and circumstances of the
20 case.

21 Finally, it is impossible for this writer to understand why the Direct Lenders
22 represented by Jones Vargas oppose the retention program, other than as part of a
23 continuing effort to cause USACM to fail. Apparently, the JV Direct Lenders believe that
24 their interests are best served if USACM is unable to service any Loans and, in their
25 particular circumstances, it is to their economic advantage to obtain a new servicing agent
26 in a crisis environment.



L A W Y E R S

1 Accordingly, the Committee respectfully requests that the Court approve the
2 motion.

3 Dated October 23, 2006.

4 **LEWIS AND ROCA LLP**

5 By /s/ RC (#006593)

6 Susan M. Freeman, AZ 4199 (pro hac vice)
7 Rob Charles, NV 6593

8 *Attorneys for Official Unsecured Creditors' Committee
for USA Commercial Mortgage Company*

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1 DECLARATION OF EDWARD M. BURR

2 I, Edward M. Burr, hereby declare under penalty of perjury that:

3 1. I am a principal with Sierra Consulting Group, LLC ("Sierra"). Sierra has
4 been employed as financial adviser employed with the Court's approval by the Official
5 Committee of Unsecured Creditors (the "Committee")

6 2. I submit this declaration on behalf of the Committee's Reply In Support Of
7 Motion For Order Approving Retention Plan Of Debtor's Remaining Employees.

8 3. At the request of the Committee, I investigated the merits of the proposed
9 retention plan, and negotiated the proposed terms on behalf of the Committee with
10 representatives of Mesirow Interim Financial Management.

11 4. I reviewed the employees for whom bonus and severance payments are
12 proposed to be made, considered their job function, the need for and expense of retaining
13 alternate employees, and compared that cost against the proposed cost of the retention
14 plan.

15 5. In the course of negotiations with Mesirow, the retention plan was changed
16 to provide somewhat less compensation to the employees but, more importantly, to create
17 compensation incentives to the employees to stay with the company as long as they are
18 needed.

19 6. For example, severance pay is paid to an employee only if and when that
20 employee's employment is terminated by USACM. The additional 2% severance will not
21 be payable if the employee voluntarily leaves.

22 7. I have served as restructuring officer as well as financial advisor to a number
23 of distressed companies. In that capacity, I have personal experience with the pros and
24 cons of providing employee retention packages in order to maintain existing employees.
25 Such packages must be carefully tailored to ensure that necessary employees are provided
26

1 a reasonable incentive to stay, while unnecessary payments are not made to the employees,
2 and thus to the detriment of creditors.

3 8. It is my opinion that while the retention plan proposed by Debtors is not, in
4 my view, perfect, it is a reasonable retention plan and considerably less expensive to the
5 interests of creditors than with the cost of either having no employees, and shutting the
6 company down, or replacing the employees with contract employees. Further,
7 replacement employees would have none of the institutional knowledge that existing
8 employees have today.

9 I declare under penalty of perjury that the foregoing is true and correct to the best of
10 my knowledge, information and belief.

11 DATED: October 23, 2006.

S/EMB

Edward M. Burr